

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

SB

APPLICATION NO. 713	FILING DATE 11/23/97	BELL	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
			A	400-009

STEPHEN T SULLIVAN  
5060 NORTH 40TH STREET  
SUITE 120  
PHOENIX AZ 85018-2140

QM12/0705

EXAMINER  
FOSTER, J

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 07/05/01 22

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. <b>08/901,713</b>	Applicant(s) <b>Bell</b>						
	Examiner <b>Jimmy G. Foster</b>	Art Unit <b>3728</b>						
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>								
<p><b>Period for Reply</b></p> <p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>three</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p> <ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>								
<p><b>Status</b></p> <p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>Mar 23, 2001</u></p> <p>2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.</p> <p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>								
<p><b>Disposition of Claims</b></p> <p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-31</u> is/are pending in the application.</p> <p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p> <p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6) <input checked="" type="checkbox"/> Claim(s) <u>1-31</u> is/are rejected.</p> <p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.</p>								
<p><b>Application Papers</b></p> <p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p> <p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a)<input type="checkbox"/> approved b)<input type="checkbox"/> disapproved.</p> <p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>								
<p><b>Priority under 35 U.S.C. § 119</b></p> <p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p> <p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</li> <li>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</li> <li>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> </ol> <p>*See the attached detailed Office action for a list of the certified copies not received.</p>								
<p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>								
<p><b>Attachment(s)</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">           15) <input type="checkbox"/> Notice of References Cited (PTO-892)         </td> <td style="width: 50%; padding: 2px;">           18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____         </td> </tr> <tr> <td style="width: 50%; padding: 2px;">           16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         </td> <td style="width: 50%; padding: 2px;">           19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)         </td> </tr> <tr> <td style="width: 50%; padding: 2px;">           17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____         </td> <td style="width: 50%; padding: 2px;">           20) <input type="checkbox"/> Other: _____         </td> </tr> </table>			15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____	16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____
15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____							
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)							
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	20) <input type="checkbox"/> Other: _____							

Art Unit: 3728

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindsay (4,993,551) in view of Baumgartner (3,678,977). In the reference of Lindsay, the tool holder 10 may be considered to define a utility apron. The apron/holder includes a shell 20,22,24 with a lip portion 20 for contacting the lip of a bucket 12 to support the shell on the bucket. The exterior surface of the apron is at 24 and includes a plurality of pockets 28 disposed thereon. In addition, the interior surface of the apron is at 22 and includes a plurality of pockets 26 disposed thereon.

Although the reference of Lindsay does not disclose specific sizes for the pockets 26 and 28 of the holder 10, it would have been obvious to have made the pockets with any sizes desired, including the sizes claimed by Applicant, since it has been held that the particular size of an article generally will not support patentability. In re Rose, 105 USPQ 237, 240 (CCPA 1955); In re Yount, 80 USPQ 141.

Art Unit: 3728

Although the reference of Lindsay does not disclose a resilient pocket opening, the reference of Baumgartner suggests at element 27 and column 2, lines 13-19 that the opening edge of a pocket may be provided with an elastic band for the purpose of retaining objects placed into the pocket. Baumgartner further suggests in lines 22-24 that retained objects may include elongated hand implements (e.g., a pen or pencil) and cleaning items (e.g., cleansing tissues). Accordingly, it would further have been obvious in view of Baumgartner to have provided elastic bands at the openings of the pockets 26,28 of Lindsay for the purpose of resiliently retaining hand and cleaning implements in the pockets.

Although the reference of Lindsay does not disclose pleats, the reference of Baumgartner also suggests at 28 and at column 2, lines 20-22 that pleats may be provided in the sides of a resilient pocket (23,25) for the purpose of allowing expansion of the pocket to receive items in the pocket. This appears to correspond to Applicant's function for pleats. Therefore, it would further have been obvious in view of Baumgartner to have provided pleats in said pockets of Lindsay for the purpose of expanding the openings so as to receive items in the pockets.

This rejection further considers the evidence (if any) of non-obviousness that is presented by the declaration of George E. Millican, Jr, in addition to the prima facie case of obviousness provided by the above applied references of prior art.

Art Unit: 3728

Firstly, the examiner finds that there are statements made by the declaration that lack a nexus with the claimed invention. Paragraph 6 of the declaration refers to a bucket or a caddy. No bucket or caddy is called for in the claims. Instead, claims 1-18 and 27-30 call for a support device that has an opening. And in claims 19-26 even the support device is only claimed in an intended-use format. In addition, the examiner finds that the declaration lacks probative value since it lacks any evidence that shows one of the following: unexpected results, commercial success, solution of long-felt need, inoperativeness of a reference, invention before the date of a reference, or an allegation of an author of one of the references that his invention was derived from the applicant. See MPEP 716.01(c).

Specifically, regarding unexpected results, no showing has been made that the use of an elastic in a pocket opening of a utility apron would function in an unexpected manner. In fact, the declaration in paragraph 7 tends to support the notion that the elastic would function in the same manner as is taught or is evident in the prior art.

Specifically regarding a solution of long-felt need, the declarer has failed to establish that such a solution has been made with respect to the known closest prior art device, such as an apron like that of Lindsay. The closest known device mentioned in paragraph 6 of the declaration is a caddy or bucket; no apron is mentioned. The declaration must compare the invention to the closest prior art. MPEP 716.02(e). Although paragraph 7 does mention *prior utility aprons*, it fails to indicate a need that was long-felt, to which the invention

Art Unit: 3728

provided a solution. No factual data, such as multiple or ongoing events of mishaps or problems with prior aprons, and dates of such events, has established a long-felt need regarding improvement over such aprons.

At most, the declaration of George E. Millican, Jr. is a showing of novelty, not unobviousness, since the declaration merely points out what is evident from a comparison of the disclosure of the invention with the device of Lindsay, that the invention distinguishes over the prior art aprons by providing a resilient material in the pocket. But the rejection is not with respect to anticipation; it is with respect to obviousness. The declaration provides no significant probative value with respect to non-obviousness for the reasons stated above.

Weighing the evidence of obviousness provided by the applied references of prior art together with whatever evidence of non-obviousness is provided by the declaration, the examiner finds that the evidence of obviousness indicated by the references is stronger than the evidence of non-obviousness shown by the declaration.

3. Claims 1-31 are also rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-31 above, and further in view of Yoo (5,431,265). The reference of Yoo not only teaches using elastic in a pocket opening for retaining an item in the pocket but using such an elastic for retaining the item in the pocket opening (col. 4, line 68 through col. 5, line 3). This appears to correspond to Applicant's function for resilient pocket openings.

Art Unit: 3728

Accordingly, it further would have been obvious in view of the suggestion of Yoo to have provided elastic along the opening edge of the pockets of Lindsay for the purpose of retaining items in the pocket openings.

The examiner's statements above regarding the declaration of George E. Milligan, Jr are also incorporated into this rejection.

4. Applicant's arguments filed March 23, 2001 have been fully considered but they are not persuasive for the reasons of record (see the Office action which was mailed on May 4, 2000).

5. For contacting the PTO by phone, the following contact numbers may be used:

For tracking of papers and association of papers with cases --  
Customer Service. . . (703)306-5648

For matters regarding examination -- Examiner:  
Jim Foster . . . . (703)308-1505

For faxing of correspondence:

Draft amendments only-(703)308-7769

(Examiner should be notified of fax)

Formal correspondence-(703)305-3579 or 305-3580

For petitions:

Before the Examiner . (703)308-1505

Before the Director . (703)308-3872

Other petitions . . . (703)305-9282

  
JIMMY G. FOSTER  
PRIMARY EXAMINER

GROUP 3720

6/27/01

JGF  
June 27, 2001

Attachment for PTO-948 (Rev. 03/01, or earlier)

6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.